

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE:

B-185440

DATE: JUL 13 1976

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MATTER OF:

Paul R. Thomas - Subsistence while occupying
temporary quarters

DIGEST:

Incident to transfer employee occupied residence which he was in process of purchasing. Employee reclaims subsistence while occupying temporary quarters denied by his agency. Whether residence was "temporary quarters" for purpose of Federal Travel Regulations (FPMR 101-7) para. 2-5.2c (May 1973) is dependent upon employee's intent at time residence was occupied. Employee's claim may not be allowed since it is clear that he intended to occupy residence on permanent basis, notwithstanding he was negotiating for loan, all utilities were not hooked-up, and employee's action resulted in savings to Government.

This action is at the request of Mr. James E. London, an Authorized Certifying Officer of the Bureau of Prisons (Bureau). By memorandum of November 19, 1975, Mr. London forwarded the claim of Mr. Paul R. Thomas, an employee of the Bureau. Mr. Thomas claimed 20 days of subsistence while occupying temporary quarters for the period that he occupied the residence which he was in the process of purchasing.

Mr. Thomas' original claim for 20 days' subsistence while occupying temporary quarters was denied by the Bureau on the basis of a decision of our Office, B-160904, March 7, 1967. In that decision, this Office denied on employee's claim for subsistence while occupying temporary quarters on the basis that the rental quarters occupied were not temporary in that the employee had entered into a rental agreement for the quarters while purchase arrangements were being consummated.

Mr. Thomas contends that the above-cited decision is not applicable. He bases his statement on the following five reasons; the first four of which are paraphrased and the fifth quoted in its entirety:

1. It would have been extremely difficult to obtain alternate rental housing within the limits of the authorized allowance.
2. By renting the residence prior to purchase, it was not necessary to place his household effects in storage, thus avoiding the additional expense associated therewith.

3. Mr. Thomas moved his family into the residence notwithstanding that the air conditioning did not work, the gas had not been hooked-up, the washer-dryer didn't work, and the bathroom fixtures were not completed.
4. Purchase of the residence was contingent upon obtaining financing.
5. "To require me to bear the burdens of these legitimate expenses increases the financial losses incurred by this move, i.e., higher cost of living due to housing costs, utilities, taxes, gasoline, etc. Surely, it is not the intent of government policy to cause its employees financial expenses because of transfers, but rather to extend to them as liberal a reimbursement policy as is possible and consistent with the intent to help government employees relocate with minimal psychological and financial disruption and inconvenience."

Section 5724a(3), title 5, United States Code (1970), provides for reimbursement of temporary quarters allowance. Implementing regulations are contained in chapter 2, part 5 of the Federal Travel Regulations (FPMR 101-7, May 1973) (FTR) Paragraph 2-5.2c of the Federal Travel Regulations (May 1976) defines temporary quarters as follows:

"The term 'temporary quarters' refers to any lodging obtained from private or commercial sources to be occupied temporarily by the employee or members of his immediate family who have vacated the residence quarters in which they were residing at the time the transfer was authorized."

We have consistently held that a determination as to what constitutes temporary quarters must be based on the facts in each case. B-183239, June 25, 1975. Thus, in past decisions we have considered such factors as the duration of a lease, B-173326, October 27, 1971, movement of household effects into the quarters, B-175913, June 19, 1972, the type of quarters, B-167361, August 5, 1969, expressions of intent, B-179870,

September 26, 1974, attempts to secure a permanent dwelling, B-163893, May 9, 1968, and the period of residence in the quarters by the employee, B-167632, August 20, 1969. The above factors were utilized in attempting to determine whether the intent of the employee was to occupy the quarters on a permanent or temporary basis. Thus, in certain cases payment of temporary quarters allowance has been allowed where the employee manifested an intent to only temporarily occupy quarters, even though such quarters subsequently became permanent. B-176367, August 4, 1972, and 53 Comp. Gen. 508 (1974).

However, in the instant case it is clear that Mr. Thomas' intent was to occupy the residence on a permanent basis. In this respect, we have consistently held that when an employee moves into a house he has decided to purchase, even though final settlement for the house has not yet taken place, he has ceased to occupy "temporary quarters." We have so held despite the fact that the employee was occupying such quarters while negotiating for a loan, B-177244, February 20, 1973, that the occupancy of the purchased quarters resulted in a savings to the Government, B-169962, July 2, 1970, that the utilities had not yet been connected, B-177546, February 8, 1973, or that some condition precluded the employee and his family from living in a motel. B-169962, supra.

Concerning Mr. Thomas' fifth contention, quoted above, there exists no authority to reimburse an employee for all expenses that he may incur incident to a transfer nor was it the intent of the FTR to do so. The FTR contain numerous limitations on both the types of expenses and on the dollar values for which reimbursement of relocation expenses will be allowed. Rather, the rule is that only those expenses which are for reimbursement under the applicable statute or regulation are for reimbursement. This Office has no authority to waive or modify regulations issued pursuant to law, which have the effect of law such as the Federal Travel Regulations, regardless of any extenuating circumstances which may be present. See 53 Comp. Gen. 364 (1973); 51 id. 162 (1971); and 43 id. 31 (1963).

Accordingly, the claim for 20 days temporary quarters allowance must be denied for the period in which Mr. Thomas occupied the residence which he subsequently purchased.

Paul G. Dembling

For
Comptroller General
of the United States